

Contract Part B

Department of Executive Services
Finance and Business Operations Division
Procurement and Contract Services Section
206-684-1681 TTY Relay: 711

Contract Title: **Lab Trailers - Leasing**

RFP Number **06-026 PXR**

Buyer: Paul Russell

CONTRACT

THIS CONTRACT, made this _____ Day of _____, 2006, by and between King County, Washington, a home rule charter county and a political subdivision of the State of Washington (hereinafter "County") and _____ with its principal place of business at _____ (hereinafter "Contractor").

WITNESSETH:

WHEREAS, the County has caused Contract documents for:

Contract No.: _____

Contract Title: Lab Trailers Leasing

to be prepared for certain Work as described therein; and

WHEREAS, the Contractor has assured the County that it has the specialized expertise and experience necessary to properly Provide the goods and services in a timely manner and that its proposal includes all of the functions and features required for the goods and services; and

WHEREAS, the County has accepted the Contractor's offer to provide the goods and services in accordance with the Contract's terms, Scope of Work and proposal documents; and

WHEREAS, by executing this Contract, the Contractor represents that the waiver of the Contractor's immunity under industrial insurance, Title 51 RCW, as set forth in the Contract documents was mutually negotiated by the parties; and

NOW THEREFORE, in consideration of the mutual covenants and agreements of the parties herein contained and to be performed, the Contractor hereby agrees to supply the goods and services at the price and on the terms and conditions herein contained, and to assume and perform all of the covenants and conditions herein required of the Contractor, and the County agrees to pay the Contractor the Contract price provided herein for the supply of the goods and services and the performance of the covenants set forth herein.

THE FURTHER TERMS, CONDITIONS AND COVENANTS of the Contract are set forth in the following exhibit parts each of which is attached hereto and by this reference made a part hereof in the following order of precedence: **[1]** Contract Amendment; **[2]** the Contract Document which includes: Definition of Words and Terms, Standard Contractual Terms and Conditions, Specific Contractual Terms and Conditions, Insurance Requirements, Scope of Work, and Attachments B) Price, O) Contractor's Insurance Forms **[3]** RFP Addenda; **[4]** Request for Proposals; **[5]** Best and Final Offer; and **[6]** Contractor's proposal.

COMPANY NAME

KING COUNTY

Authorized Signature

Authorized Signature

Name and Title (Print or Type)

Name and Title (Print or Type)

Date Accepted: _____

Date Accepted: _____
Approved as to form only: _____

TABLE OF CONTENTS

DEFINITION OF WORDS AND TERMS	4
SECTION 1 - STANDARD CONTRACTUAL TERMS AND CONDITIONS	5
1-1 Administration	5
1-2 Contract Changes	5
1-3 Termination for Convenience/Default/Non-Appropriation	5
1-4 Force Majeure	6
1-5 Taxes, Licenses, and Certificate Requirements	7
1-6 Assignment	7
1-7 Indemnification and Hold Harmless	7
1-8 Applicable Law and Forum	8
1-9 Conflicts of Interest and Non-Competitive Practices	8
1-10 Disputes, Claims and Appeals	9
1-11 Mediation and Arbitration	9
1-12 Retention of Records, Audit Access and Proof of Compliance with Contract	10
1-13 Other Public Agency Orders	10
1-14 Recycled Products Policy	10
1-15 Nondiscrimination and Equal Employment Opportunity	11
1-16 Severability	12
1-17 Nonwaiver of Breach	12
1-18 Equal Benefits to Employees with Domestic Partners	12
SECTION 2 - SPECIFIC CONTRACTUAL TERMS AND CONDITIONS	13
2-1 Execution of the Contract	13
2-2 Contract Term	13
2-3 Notices	13
2-4 Payment Procedures	14
2-5 Advance Payment Prohibited	14
2-6 Purchase Orders	14
2-7 Pricing	15
2-8 Shipping Charges	15
2-9 Acceptance Process	15
2-10 Warranty Provisions	15
2-11 Independent Status of Contractor	16
2-12 Nondisclosure of Data	16
2-13 Non-Disclosure Obligation	16
2-14 Public Disclosure Requests	16
2-15 Pricing of Spare Parts	17
2-16 Industrial and Hazardous Waste	17
2-17 Changed Requirements	17
SECTION 3 - INSURANCE REQUIREMENTS	18
3-1 Evidence and Cancellation of Insurance	18
3-2 Insurance Requirements	18
3-3 The Contractor shall maintain limits no less than, for:	19

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written Documentation of the County's determination that the Contractor's Work has been completed in accordance with the Contract.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate Contracts, resolves contractual issues and supports the Project Manager during Contract performance.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or Scope of Work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between the County and the Contractor for completion of the Work under the Contract as set forth on Page 2 of this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with the County for the performance of services or Work under the Contract.

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost Analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Project Manager: The individual designated by the County to manage the project on a daily basis and who may represent the County for Contract administration. This Contract may be part of a larger County project.

Provide: Furnish without additional charge.

RCW: The Revised Code of Washington.

Scope of Work (SOW): A section of the Contract consisting of written descriptions of services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Software, Hardware and services specified under this Contract, including Contract Amendments and settlements.

SECTION 1 - STANDARD CONTRACTUAL TERMS AND CONDITIONS

1-1 Administration

This Contract is between the County and the Contractor who shall be responsible for providing the Work described herein. The County is not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of the County without the written approval of the County. Any current or former County employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and the County shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by the County. Reports and data required to be Provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Project Manager for a response.

1-2 Contract Changes

No oral order or conduct by the County shall constitute a change to the Contract. If any Contract Amendment causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every Contract Amendment may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract Amendments do not require notice to sureties by County.

Ref: KC CON 7-8-1 (AEP).

1-3 Termination for Convenience/Default/Non-Appropriation

A. Termination for Convenience

The County for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by the County, the Contractor shall immediately stop Work as directed in the Notice, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable Contract closeout costs and profit on that portion of the Work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to the County, the Contractor shall account for the same and dispose of it in the manner the County directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract, applicable laws and regulations.

B. Termination for Default

If the Contractor does not deliver Work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or if the Contractor fails to comply with any material provisions of the Contract, the County may terminate this Contract, in whole or in part, for default as follows:

1. A "Notice to Cure" shall be served on the Contractor by certified mail (return receipt requested) or delivery service capable of providing a receipt. The Contractor shall have ten (10) Days to cure the default or Provide the County with a detailed written plan, which indicates the time and methods needed to bring the Work into compliance and cure the default.
2. If the Contractor has not cured the default or the plan to cure the default is not acceptable to the County, the County may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.
3. The Contractor shall only be paid for Work delivered and Accepted, or Work performed in accordance with the manner of performance set forth in the Contract less any damages to the County caused by or arising from such default. All termination payment requests are subject to Cost or Price Analysis to verify compliance with the Contract, applicable laws and regulations.
4. The termination of this Contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of the County hereunder in any manner.

C. Termination for Non-Appropriation

If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date set forth in this Contract or in any Contract Amendment hereto, the County may, upon written notice to the Contractor, terminate this Contract in whole or in part.

In accordance with King County Code 4.04.040B.6, payment shall not exceed the appropriation for the year in which termination is effected. If the Contract is terminated for non-appropriation:

1. The County shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and,
2. The Contractor shall be released from any obligation under this Contract or a related purchase order to provide further Work pursuant to the Contract as are affected by the termination.

Funding under this Contract beyond the current appropriation year is conditional upon the appropriation by the County Council of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract shall terminate at the close of the current appropriation year. The appropriation year ends on December 31 of each year.

1-4 Force Majeure

The term "force majeure" shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents, shutdowns for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the County shall be entitled to exercise any remedies otherwise provided for in this Contract, including Termination for Default.

Washington State Sales Tax

The County shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from the County, promptly remit appropriate amounts to the State of Washington.

1-5 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to Provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the County immediately of such condition in writing.

The Contractor and Subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to Provide the Work under this Contract.

1-6 Assignment

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. This provision shall not prevent Contractor from pledging any proceeds from this Contract as security to a lender so long as King County Policy Fin10-1 (AP), paragraph 6.1.3 is followed. An assignment shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

1-7 Indemnification and Hold Harmless

A. Patent and Copyright Indemnity

The Contractor shall protect, indemnify, defend and save harmless the County from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights. So long as the County gives Contractor prompt notice of any infringement claim brought against the County regarding the Software and the County gives Contractor information, reasonable assistance, and sole authority to defend or settle any infringement claim, then, in the defense or settlement of an infringement claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for the County the right to continue using the Software; (ii) replace or modify the Software so that it becomes noninfringing while giving equivalent performance; or (iii) if Contractor cannot obtain the remedies in (i) or (ii), the parties may proceed to a court of competent jurisdiction to determine the amount of fees that shall be returned to the County. Before final payment is made on this Contract, the Contractor shall, if requested by the County, furnish acceptable proof of a proper release from all such fees or claims. Contractor shall have no liability to indemnify or defend the County to the extent the alleged infringement is based on: (i) a modification of the Software the County or others authorized by the County but not by the Contractor; or (ii) use of the Software by other than in accordance with the Documentation. If the County is required to defend itself or enter into a settlement agreement due to Contractor's failure to defend, Contractor shall indemnify the County for its costs and expenses as well as any judgment entered against the County.

B. Indemnification For All Other Actions

Contractor shall protect, defend, indemnify and save harmless the County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages for injuries to Persons and/or damage to tangible property, arising out of or in any way resulting from the acts or omissions of the Contractor its officers, employees, subcontractors and/or agents. Contractor's indemnification obligation shall include but is not limited to, all claims against the County by an employee or former employee of the Contractor or its Subcontractors, and the Contractor expressly waives by mutual negotiation, with respect to the County only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's

compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. In the event the County incurs any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnitor.

C. Limitation of Liability

Except for the County's intentional and willful violations of Contractor's intellectual or proprietary rights, which can be attributed to the County management, and injuries to persons by either party, neither party shall be liable for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising, even if it has been advised of the possibility of such damages. Excluding damages incurred under the paragraphs A and B, either party's liability for damages to the other under this Contract shall be limited to (1 X times) the value of the Contract or one million dollars whichever is greater. The parties agree to the allocation of liability of risk set forth in this subsection.

1-8 Applicable Law and Forum

This Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW. Any claim or suit concerning this Contract may only be filed and prosecuted in either the King County Superior Court or U.S. District for the Western District of Washington, in Seattle.

1-9 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to the County. The County shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid.
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any of its agents, employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.
3. Any Person having an existing Contract with the County or seeking to obtain a Contract who willfully attempts to secure preferential treatment in his or her dealings with the County by offering any valuable consideration, thing or promise, in any form to any County official or employee shall have his or her current Contracts with the County canceled and shall not be able to bid on any other County Contracts for a period of two (2) years.

C. Disclosure of Current and Former County Employees

To avoid any actual or potential conflict of interest or unethical conduct:

1. County employees or former County employees are prohibited from assisting with the preparation of proposals or contracting with, influencing, advocating, advising or consulting with a third party, including Contractor, while employed by the County or within one (1) year after leaving County employment if he/she participated in determining the Work to be done or processes to be followed while a County employee.
2. Contractor shall identify at the time of offer current or former County employees involved in the preparation of proposals or the anticipated performance of Work if awarded the Contract. Failure to identify current or former County employees involved in this transaction may result in the County's denying or terminating this Contract.
3. After Contract award, the Contractor is responsible for notifying the County's Project Manager of current or former County employees who may become involved in the Contract any time during the term of the Contract.

Ref: K.C.C. 3.04.015, 3.04.20, 3.04.30, 3.04.035, 3.04.060.

1-10 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Project Manager, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section.

The Buyer and Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Project Manager.

In the event the Contractor disagrees with the determination of the Buyer and Project Manager, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent to mediation, arbitration or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to the County.

1-11 Mediation and Arbitration

If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. Nothing in this subsection precludes any party from seeking relief at any time from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

1-12 Retention of Records, Audit Access and Proof of Compliance with Contract

A. Retention of Records

The Contractor and its Subcontractors shall maintain books, records and documents of its performance under this Contract in accordance with generally accepted accounting principles. The Contractor shall retain for six (6) years after the date of final payment under the Contract all financial information, data and records for all Work.

B. Audit Access

1. Federal, state or County auditors shall have access to Contractor's and its Subcontractors' records for the purpose of inspection, Cost or Price Analysis, audit or other reasonable purposes related to this Contract. Federal, state or County auditors shall have access to records and be able to copy such records during the Contractor's normal business hours. The Contractor shall Provide proper facilities for such access, inspection and copying.
2. Audits may be conducted during or after the Contract period for purposes of evaluating claims by or payments to the Contractor and for any other reason deemed appropriate and necessary by the County. Audits shall be conducted in accordance with generally accepted auditing principles and/or federal, state or County audit procedures, laws or regulations. The Contractor shall fully cooperate with the auditor(s).
3. If an audit is commenced more than sixty (60) Days after the date of final payment for Contract Work, the County shall give reasonable notice to the Contractor of the date on which the audit shall begin.

C. Proof of Compliance with Contract

The Contractor shall, upon request, provide the County with satisfactory documentation of the Contractor's compliance with the Contract.

In addition, the Contractor shall permit the County, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all Work, materials, payrolls and other data and records involving the Contract.

Ref: KCC 2.20.035, 2.20.040, 2.20.050, RCW 43.09.050, 43.88, 42.40.020, 42.40.040, 42.160.

1-13 Other Public Agency Orders

Other federal, state, county and local entities may utilize the terms and conditions established by this Contract if agreeable to all parties. The County does not accept any responsibility or involvement in the purchase orders or Contracts issued by other public agencies.

1-14 Recycled Products Policy

Contractors able to supply products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals.

The Contractor shall use recycled paper for all printed and photocopied documents related to the submission of this solicitation and fulfillment of the contract and shall, whenever practicable, use both sides of the paper. (Reference: KCC 10.16 & King County Executive Policy CON 7-1-2).

1-15 **Nondiscrimination and Equal Employment Opportunity**

A. Nondiscrimination in Employment and Provision of Services

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County Contracts or to obtain or compete for Contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with Subcontractors and suppliers, the Contractor shall not discriminate against any Person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

Ref: KCC 12.16.020.

C. Compliance with Laws and Regulations

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits

The County may, at any time, visit the project site, Contractor's and Subcontractors' offices to review records related to the solicitation, utilization, and payment to Subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this section. The Contractor shall Provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all Work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to Subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to the County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of Contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

1-16 Severability

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid and enforceable and have the intent and economic effect as close as possible to the invalid, illegal and unenforceable provision.

1-17 Nonwaiver of Breach

No action or failure to act by the County shall constitute a waiver of any right or duty afforded to the County under the Contract; nor shall any such action or failure to act by the County constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by the County in writing.

1-18 Equal Benefits to Employees with Domestic Partners

King County's Equal Benefits (EB) Ordinance 14823 states that to be eligible for award of Contracts at a cost of \$25,000.00 or more, firms must not discriminate in the provisions of employee benefits between employees with spouses, and employees with domestic partners. The Contractor shall be required to complete a Worksheet and Declaration form. Compliance with Ordinance 14823 is a mandatory condition for execution of a Contract. The EB Compliance forms and Ordinance 14823 are available online at:

<http://www.metrokc.gov/procurement/forms/gs.aspx>

SECTION 2 - SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2-1 Execution of the Contract

The documents constituting the Contract between the County and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed on the Contract, page 2. The date the Contract is countersigned by the County is the Contract effective date. No other act of the County shall constitute Contract award. After Contract award, the County shall issue Purchase Orders detailing the Work to be performed.

The Contract may be executed in counterparts, any of which shall be deemed an original and which shall together constitute one Contract.

2-2 Contract Term

The initial term of this Contract shall be two (2) years, and may be extended for an additional one year term, commencing on the effective date of the Contract and subject to the termination provisions at subsection 1-4, Termination for Convenience/Default/Non-Appropriation. The Warranty Period begins at Final Acceptance for a period not less than the term of the lease. Upon the completion of the Warranty Period, the Maintenance Agreement runs from year to year unless terminated as described in this Contract. The maximum term for this Contract, consisting of the base period plus extensions, is three (3) years unless extended by written agreement signed by all parties, except that the Software License shall be perpetual.

2-3 Notices

All notices or Documentation required or provided pursuant to this Contract shall be in writing and shall be deemed duly given when delivered to the addresses first set forth below.

For Project Management related notices or Documentation:

KING COUNTY	CONTRACTOR
Project Manager - Jacquelynn Roswell,	
M.S. RNC-NR-0100	
Natural Resources & Parks Wastewater Treatment 1200 Monster Rd SW	
Renton, WA 98055	
206-684-2438	
Jacquelynn.roswell@metrokc.gov	

For Contract related notices or Documentation contact:

King County Procurement and Contract Services Section	
M.S. EXC-FI-0871	
Exchange Building, 8 th Floor	

821 Second Ave.	
Seattle, WA 98104-1598	
Buyer -	
(206) 684-1054	
paul.russell@metrokc.gov	

2-4 **Payment Procedures**

A. Invoices

The Contractor shall furnish monthly invoices to:

Project Manager - Jacquelynn Roswell,
M.S. RNC-NR-0100
Natural Resources & Parks Wastewater Treatment
1200 Monster Rd SW
Renton, WA 98055
206-684-2438

The County will not be bound by prices contained in an invoice that are higher than those in the currently approved price list or this Contract. If prior acceptance of the higher price has not been done by the County, the invoice may be rejected and returned to the Contractor for a correct invoice.

FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.

B. Payments

Within thirty (30) Days after receipt of an invoice, the County shall pay the Contractor for Accepted Work, upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice.

If the Contractor is registered with the State of Washington it shall add all applicable State sales or use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to the State of Washington, or the County will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its Subcontract within thirty (30) Days from the receipt of each payment the Contractor receives from the County.

2-5 **Advance Payment Prohibited**

No advance payment shall be made for the Work furnished by Contractor pursuant to this Contract.

Ref: Article VIII, § 7 of the Washington State Constitution.

2-6 **Purchase Orders**

Purchase orders shall be issued referencing this Contract number. Purchase order(s) shall define and authorize the Work by the Contractor based on the prices contained in Attachment B. The purchase orders issued by the County may reflect agreed to modification(s) of Contract terms, funding or other matters subject to subsection 1-2, Contract Amendments.

2-7 Pricing

Prices shall remain firm for the duration of the initial Contract period and for the priced additional months.

King County will evaluate this information to determine if revising the pricing is considered fair and reasonable to the satisfaction of King County. Requests for any such change are to be made in writing to the Buyer in the Procurement Services Division office. A contract amendment issued by the County will institute the price adjustment and establish the effective date for the new prices.

2-8 Shipping Charges

All prices shall include freight FOB to the designated delivery point. The County shall reject requests for additional compensation for freight charges.

2-9 Acceptance Process

The County may give iterative acceptances as the Work is accomplished either by phase or milestone. The Contractor will give the County “notice of completion” of Work related to a specific milestone following the Contractor’s completion of all such Work in accordance with the payment schedule and delivery requirements in the Contract.

- A. Acceptance Process. Upon completion of the delivery and set-up of the trailers per specifications, the Contractor will notify the County and the Acceptance process will commence. Acceptance shall be based on conformance with the specifications.
- B. Correction of Deficiencies Process. If a deliverable is rejected, Contractor will have a commercially practicable time to correct items documented in the County’s rejection. Following the delivery of Contractors’ notice that the Work has been corrected, the County will issue a written notice of Acceptance or provide Contractor with a notification of rejection, which will include documentation of the specific grounds for the rejection, outlining Work not in compliance with the milestone. The project schedule will be adjusted accordingly in the event that a dispute regarding the method or accuracy of the correction causes a delay. If the deliverable(s) fails to comply with the milestone after Contractor’s second attempt to correct the Work and no clear plan can be agreed upon between the County Project Manager and the Contractor’s Project Manager, the County will determine the appropriate corrective actions.

2-10 Warranty Provisions

- A. No Waiver of Warranties and Contract Rights. Conducting of tests and inspections, review of Scope of Work or plans, payment for a Work, or Acceptance or Final Acceptance of the Work by the County shall not constitute a waiver of any rights under this Contract or in law. The termination of this Contract shall in no way relieve the Contractor from its warranty/guarantee responsibility.
- B. Warranty Term. The Contractor warrants that the Work performed under this Contract shall be free from defects in material and workmanship, and shall conform all requirements of this Contract, for the duration of the lease and any additional leasing period. Any Work corrected shall be subject to this subsection to the same extent as the Work initially provided.
- C. Provide full lease warranty on building and supplied components covering the term of the Contract plus extensions. This coverage includes building envelope and all building systems that are part of the building as delivered to the site.
- D. Contractor shall provide the warranty coverage themselves or subcontract with a local contractor with 24 hour availability for repair of building mechanical, electrical and envelope problems that

might develop during the course of the lease. The lab is critical to King County operations and is operational 24 hours a day, 365 days per year.

- E. Warranty Applicable to Third Party Suppliers, Vendors, Distributors and Subcontractors. The Contractor shall ensure that the warranty requirements of this Contract are enforceable through and against the Contractor's suppliers, vendors, distributors and Subcontractors. The Contractor is responsible for liability and expense caused by any inconsistencies or differences between the warranties extended to the County by the Contractor and those extended to the Contractor by its suppliers, vendors, distributors and Subcontractors. Such inconsistency or difference shall not excuse the Contractor's full compliance with its obligations under this Contract. The Contractor shall cooperate with the County in facilitating warranty related Work by such suppliers, vendors, distributors and Subcontractors.

2-11 Independent Status of Contractor

In the performance of this Contract, the parties shall be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associates of one another. The parties intend that an independent Contractor relationship shall be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit, which would accrue, to an employee under chapter 41.06 RCW or Title 51 RCW.

2-12 Nondisclosure of Data

Data provided by the County either before or after Contract award shall only be used for its intended purpose. Contractors and Subcontractors shall not utilize nor distribute the County data in any form without the express written approval of the County.

2-13 Non-Disclosure Obligation

While performing the Work under this Contract, the Contractor may encounter personal information, licensed technology, Software, Documentation, drawings, schematics, manuals, data and other materials described as "Confidential", "Proprietary" or "Business Secret". The Contractor shall not disclose or publish the information and material received or used in performance of this Contract. This obligation is perpetual. The Contract imposes no obligation upon the Contractor with respect to confidential information which the Contractor can establish that: a) was in the possession of, or was rightfully known by the Contractor without an obligation to maintain its confidentiality prior to receipt from the County or a third party; b) is or becomes generally known to the public without violation of this Contract; c) is obtained by the Contractor in good faith from a third party having the right to disclose it without an obligation of confidentiality; or, d) is independently developed by the Contractor without the participation of individuals who have had access to the County's or the third party's confidential information. If the Contractor is required by law to disclose confidential information the Contractor shall notify the County of such requirement prior to disclosure.

2-14 Public Disclosure Requests

Contracts shall be considered public documents and, with exceptions provided under public disclosure laws, shall be available for inspection and copying by the public.

Ref: RCW 42.17.

If a Contractor considers any portion of the Work, including Software, data and related materials, delivered to the County to be protected under the law, the Contractor shall clearly identify such items with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET." If a request is made for disclosure of such item, the County shall determine whether the material should be made available under the law. If the material or parts thereof are determined by the County to be exempt from public disclosure, the County shall not release the exempted documents.

If the material is not exempt from public disclosure law, the County shall notify the Contractor of the request and allow the Contractor fifteen (15) Days to take whatever action it deems necessary to protect its interests. If the Contractor fails or neglects to take such action within said period, the County shall release the item deemed subject to disclosure. By signing this Contract, the Contractor assents to the procedure outlined in this subsection and shall have no claim against the County on account of actions taken under such procedure.

2-15 Pricing of Spare Parts

The County shall have the right to conduct a Cost or Price Analysis on specific spare parts if pricing appears to be in excess of standard industry pricing for similar parts. Any differences shall be subject to negotiations to the satisfaction of the County. The County is not required to purchase spare parts under this Contract if it can purchase the same item(s) from another source under terms that are more advantageous to the County.

2-16 Industrial and Hazardous Waste

The Contractor shall comply with all applicable local ordinances, state and federal statutes, and supporting rules and regulations governing the discharge of industrial waste to a public sewer, private sewer, or side sewer tributary to the metropolitan sewerage system.

Contractor shall handle and dispose of all hazardous wastes in compliance with all applicable local, state and federal laws and regulations, including the Resource Conservation and Recovery Act, the Washington Hazardous Waste Management Act, and applicable rules and regulations of the Environmental Protection Agency and the Department of Ecology governing the generation, storage, treatment, transportation or disposal of hazardous wastes.

2-17 Changed Requirements

New federal, state and county laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well. Changed requirements shall be implemented through subsection 1-2, Contract Amendments.

SECTION 3 - INSURANCE REQUIREMENTS

3-1 Evidence and Cancellation of Insurance

- A. Prior to execution of the Contract, the Contractor shall file with the County evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance shall be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the County shall receive notice at least forty-five (45) Days prior to the effective date of any cancellation, lapse or material change in the policy.
- B. The Contractor shall, upon demand of the County, deliver to the County all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.
- C. Failure to Provide such insurance in a timeframe acceptable to the County shall enable the County to suspend or terminate the Contractor's Work hereunder in accordance with Contract provisions regarding "Termination for Convenience/Default/Non-appropriation." Suspension or termination of this Contract shall not relieve the Contractor from its insurance obligations hereunder.

3-2 Insurance Requirements

- A. The Contractor shall obtain and maintain the minimum insurance set forth below.

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage shall apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Contract.

For all coverages:

Each insurance policy shall be written on an "occurrence" form; excepting insurance for professional liability/errors and omissions. Professional liability/errors and omissions when required, may be acceptable on a "claims made" form.

If coverage is approved and purchased on a "Claims Made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Contract.
- B. Minimum Scope of Insurance

Coverage shall be at least as broad as:

 - 1. General Liability

Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.
 - 2. Automobile Liability

Insurance Service form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8 and 9.

3. Professional Liability

Professional Liability, Errors and Omissions coverage.

In the event that services pursuant to this Contract either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be provided.

4. Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this Work by applicable federal or "Other States" State Law.

5. Employers Liability or "Stop Gap":

The protection provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

C. Minimum Limits of Insurance

3-3 The Contractor shall maintain limits no less than, for:

1. General Liability: **\$1,000,000** combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a **\$2,000,000** aggregate limit.
2. Automobile Liability: **\$1,000,000** combined single limit per accident for bodily injury and property damage.
3. Professional Liability, Errors and Omissions: \$1,000,000 per Claim and in the Aggregate.
4. Workers' Compensation: Statutory requirements of the state of residency.
5. Employers Liability Stop Gap: \$1,000,000.

A. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions shall be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

B. Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

1. Liability Policies:

The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract. **Use the above exact language on the Endorsement Form. (CG 20 10 11/85 or its equivalent)**

To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way.

The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

C. Acceptability of Insurers

Unless otherwise approved by the County:

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies shall fail to meet the above stated requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

D. Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. **Insurance coverages Provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.**

E. Work Site Safety

The Contractor shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Contractor shall comply with all applicable Federal, State and Local safety regulations governing the job site, employees and Subcontractors. The Contractor shall be responsible for the Subcontractor's compliance with these provisions.

F. Endorsements

Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2010 11/85" or its equivalent is required. **The County requires this Endorsement to complete the Contract.**